

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Hearing: May 5, 2021

Mailed: December 6, 2021

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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Trek Bicycle Corporation

v.

Christina Isaacs
—

Opposition No. 91232164
—

Mary Catherine Merz of Merz & Associates PC
for Trek Bicycle Corporation.

David A. Lowe of Lowe Graham Jones PLLC
for Christina Isaacs.
—

Before Kuhlke, Greenbaum and English,
Administrative Trademark Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

On Request for Reconsideration

On August 4, 2021, the Board issued a final decision dismissing the opposition brought by Trek Bicycle Corporation based on likelihood of confusion under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), to registration on the Principal Register of Applicant Christina Isaac's following marks:

RANGER TREK (in standard characters) for “Children’s activity books; Crayons; Decals; Markers; Pencils; Publications, namely, journals, newsletters and workbooks in the fields of national parks; Stickers” (International Class 16); “Backpacks; Hiking bags; Sports bags; Travel bags” (International Class 18); “Lunchboxes” (International Class 21); “Hats; Jackets; Shirts” (International Class 25); “Ornamental novelty badges” (International Class 26); “Stuffed dolls and animals” (International Class 28); and “Providing information, news and commentary in the field of recreation and leisure activities; Provision of information in the field of recreational activities, namely, national parks” (International Class 41);¹



(Outline of the map of the United States disclaimed; described as consisting of “the term ‘RANGER TREK’ in a shield design and above a U.S. map design and two children in uniform”) for “Backpacks; Hiking bags; Sports bags; Travel bags” (International Class 18); Lunchboxes (International Class 21); “Hats; Jackets; Shirts” (International Class 25); “Stuffed dolls and animals” (International Class 28); “Providing information, news and commentary in the field of recreation and leisure activities; Provision of information in the field of recreational activities, namely, national parks” (International Class 41);² and



(EXPEDITION JOURNALS and the outline of the map of the United States disclaimed; described as consisting of “the term ‘RANGER TREK EXPEDITION

¹ Serial No. 87123067, filed August 1, 2016, based on an allegation of a bona fide intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

² Serial No. 87123091, filed August 1, 2016, based on an allegation of a bona fide intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

JOURNALS' in a shield design and above a U.S. map design and two children in uniform") for "Children's activity books; Crayons; Decals; Markers; Pencils; Publications, namely, journals, newsletters and workbooks in the fields of national parks; Stickers" (International Class 16); and "Providing information, news and commentary in the field of recreation and leisure activities; Provision of information in the field of recreational activities, namely, national parks" (International Class 41).³

The Board dismissed the opposition finding the differences between the marks sufficient to avoid likely confusion despite the identical or legally identical goods and related services, and overlapping trade channels for the goods and services in International Classes 16, 18, 25 and 41, and the fame of Opposer's marks for bicycles, in particular given the differences in overall commercial impression. In addition, the Board dismissed the opposition as to the goods in International Classes 21, 26 and 28 because there was no evidence to establish Opposer's trade name or trademark rights in or a relationship to Applicant's goods in those Classes.

Opposer requests reconsideration under Trademark Rule 2.129(c), 37 C.F.R. § 2.129(c), of the Board's dismissal as it pertains to the goods in International Classes 18 and 25 only. Therefore, the request for reconsideration does not apply to Application Serial No. 87123082 or the goods and services in International Classes 16, 21, 26, 28 or 41 in Application Serial Nos. 87123067 and 87123091.

Opposer asserts the Board failed to:

Properly consider the fame of the TREK mark for bicycle/cycling-related goods;

³ Serial No. 87123082, filed on August 1, 2016, based on an allegation of a bona fide intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

Consider specific evidence of the commercial strength of Opposer's TREK mark for goods in Classes 18 and 25; and

Properly consider that it is the differing channels of trade that allowed for coexistence, rather than the differing connotation of the marks, when reviewing the prior registrations cited against Opposer's U.S. Reg. No. 60360446 for Class 25 clothing.

133 TTABVUE 3.

We address each point in turn.

1. Fame for bicycle related goods

The Board found Opposer's mark famous for "bicycles and bicycle accessories."

Opposer argues that "cycling clothing and bags are for all intents and purposes bicycle accessories." 133 TTABVUE 3. However, the Board's finding regarding fame for "bicycle accessories" expressly excluded clothing and bags: "The evidence does not support a finding that TREK is famous for the types of goods identified in the subject applications." 132 TTABVUE 18. In other words, "bicycle accessories" in the Board's finding does not include clothing or bags, and the finding of fame did not include "Backpacks; Hiking bags; Sports bags; Travel bags" or "Hats; Jackets; Shirts." Thus, Opposer's argument that "[i]f TREK is 'famous for bicycles and bicycle accessories', then the determination that there is no likelihood of confusion in this case clearly contradicts the TTAB's own findings," 133 TTABVUE 4, is misplaced.

2. Specific evidence for goods in Classes 18 and 25

Opposer argues the Board "appears to have overlooked the specific evidence Trek has provided as proof of its commercial strength with respect to bags and clothing generally." 133 TTABVUE 5. Opposer highlighted evidence in the record regarding

the length of time it has sold clothing (since 1988) and bags (1993), the amount of sales in dollar figures, and total marketing expenditures. With regard to the figures, “raw numbers of product sales and advertising expenses may have sufficed in the past to prove fame of a mark, but raw numbers alone in today’s world may be misleading.” *Bose Corp. v. QSC Audio Prods., Inc.*, 293 F.3d 1367, USPQ2d 1305, 1309 (Fed. Cir. 2002). In addition, the probative value of the marketing expenditures is limited because the figures are for North America, covering the United States and Canada. *New Era Cap Co., Inc. v. Pro Era, LLC*, 2020 USPQ2d 10596, *11 (TTAB 2020) (“Because Opposer failed to break down sales and expenditures for the United States alone, the probative value of this evidence to prove commercial strength or fame is diminished”). Moreover, they are not broken down by product and do not appear to be for only clothing and bags. The evidence of promotional efforts and commercial impressions are for bicycles not clothing or bags.

3. Opposer’s Registration No. 6036046

Finally, Opposer argues “The Office allowed for coexistence with prior Class 25 marks based on the differing channels of trade, NOT the differing connotations of the marks.” 133 TTABVUE 6 (emphasis in original). Opposer asserts that: “The Board’s decision in the present matter and the Office’s reasoning in Reg. No. 6036046 for TREK for Class 25 are logically contradictory. The Office initially rejected the application for Reg. No. 6036046 because of a likelihood of confusion with other marks. The Office allowed Reg. No. 6036046, because of a showing of the differing channels of trade. In the present matter, the Board determined that the channels of trade are identical. For at least this reason, there is a likelihood of confusion caused

by RANGER TREK for Classes 18 and 25 goods, and the Board's decision should be reversed." *Id.*

The Board addressed Opposer's Registration No. 6036046 under "other established facts." Applicant had submitted the file contents of this registration and argued Opposer's arguments against likely confusion with the marks in the cited registrations serve as admissions against interest. In response to Applicant's argument the Board determined "we do not find these statements to be in full conflict with Opposer's position in this proceeding involving a different mark. However, we agree that given the various 'trek' marks registered for similar or related goods, it would seem Applicant's marks, where the addition of 'RANGER' creates a sufficient distinction, may coexist as well."

We first point out that the identification of goods in Opposer's Registration No. 6036046 is "apparel, namely, pants, shorts, t-shirts, shirts, vests, jackets, socks, gloves, beanies, caps, hats, hoodies," i.e., not limited by trade channels. The identification of goods in two of the cited registrations are similarly not limited by trade channels:

TREK (stylized) for "casual footwear of leather, suede or synthetic materials"; DESERT TREK for "footwear"; TREK FLEX for "footwear," all owned by C. & J. Clark International Limited;

TREK AMERICA and design for "clothing, namely, t-shirts, shirts, shorts, trousers, uniforms and bathrobes, footwear; headgear, namely, hats, caps, sun visors, headwear," owned by Trek America Travel Limited.

Under our jurisprudence, as we discussed and found in this proceeding, we must look at the goods and trade channels as they are identified. It may be that Opposer

argued against likely confusion based on differing trade channels, but the fact remains that it managed to receive an unlimited registration, one that, under our analysis, has identical trade channels to the cited registrations. The reasoning for the ultimate determination to pass Opposer's underlying application to publication is not in the record, but given that the trade channels in the identifications must be presumed identical, there may have been other reasons. Nonetheless, even if the reasoning were based on differing trade channels, that does not result in conflict with our determination that the addition of the word RANGER is sufficient to avoid likely confusion, despite the same trade channels. Finally, we add that the absence of these "other established facts" would not change the result.

For the foregoing reasons, the applicable law and the evidentiary record amply support the Board's Decision concerning the absence of fame for clothing and bags and the existence of other TREK marks for similar or related goods on the register. We find no error in the Decision. TBMP § 543.

The request for reconsideration is denied.